IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 742 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SONIBEN WD/O MOTIBHAI TEJABHAI

Appearance:

1. Criminal Appeal No. 742 of 2001

Mr A J Desai, APP for Petitioner No. 1

..... for Respondent No. 1-2

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.P.BUCH

Date of decision: 19/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

This appeal under section 378(1)(3) of the Code of Criminal Procedure Code, 1973 has been preferred against the judgment of acquittal dated 27.6.2001 recorded by the learned Special Judge, Ahmedabad City in Atrocity Criminal Case No.46/2000 acquitting the accused (present respondents) for the offences punishable under section 302 read with section 114 of Indian Penal Code and also under section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The facts leading to the filing of the present acquittal appeal by the appellant State shortly stated are that complainant Pravinchandra Chhaganbhai, (since deceased) on 10.11.1999, lodged a complaint at Naroda police station, Ahmedabad to the effect that he had a love affair with one Sugnaben (respondent no.2), daughter of Soniben Motibhai (respondent No.1) which relation had subsequently broken and hence Soniben and Sugnaben were having enmity with the complainant. In the meantime, on the date of the incident, the complainant was passing from the nearby bus stand. At that time, Soniben called the complainant in her house. At that time her daughter Sugnaben was also present. That Soniben had asked the complainant as to why he had left her daughter and so saying she poured solvent which was kept in a plastic bottle on the complainant. Sugnaben had closed the door from inside, Soniben pushed the complainant and he fell down and Soniben lighted a match stick and set the complainant on fire, with the result that he started burning. Thereafter, he got up and opened the door and sat in the water tank in the side lane and extinguished the fire. Thereafter, he went to Hospital and gave a complaint to police Officer of Naroda Police Station for having received fire burns on the abdomen, neck and hands. Thereafter, an offence came to be registered against the accused persons and investigation started. That after recording the complaint at about 9 p.m. in the late evening the complainant succumbed to the burn injuries that he had allegedly sustained in the incident. In the course of investigation through the Executive Magistrate, dying declaration of the complainant was recorded in Shardaben Hospital. Statement of the witnesses were recorded, panchnama of the place of incident was also recorded. The postmortem on the dead body was performed. During the course of investigation, it was revealed that the complainant who later on succumbed to the burn injuries, was a member of the scheduled castes. On completion of the investigation,

charge-sheet was filed against the accused persons for the aforesaid offence.

3. That on 15.3.2001, charge was framed vide Exh. 2 against both the accused persons for the offences alleged against them. Both the accused persons denied the charges levelled against them and claimed to be tried. Thereafter, in order to bring the guilt home to the accused, the prosecution adduced oral as well as documentary evidence. The learned Special Judge, appreciating the evidence on record, found that the complainant-deceased Pravinchandra Chhaganbhai was a member of the Scheduled Castes and, therefore, the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. would be applicable.

4. The learned Special Judge, on appreciation of evidence, did not find the charge levelled proved against the accused and acquitted both the accused persons.

5. We have heard the learned APP Mr A J Desai and also perused the record and proceedings of the trial court requisitioned vide order dated 8.10.2002.

6. Exh. 11 is the copy of the certificate issued by the Backward Class Welfare Officer, Ahmedabad District. Perusal of the same suggests that the complainant-Pavinchandra Chhaganbhai belonged to Vankar community and thereby was a member of the Scheduled Castes.

7. Exh. 29 is the complaint dated 10.11.1999 given by the deceased himself. It is stated by PW 5 at Exh.28 that he recorded complaint at Exh. 29 given by the deceased on 10.11.1999 on getting a telephonic intimation from Shardaben Hospital at 12.30 p.m. and he went to the hospital and thereafter in the hospital he took the complaint at Exh.29. Perusal of Exh.29 suggests that the complaint of the injured (then alive) was recorded by PW 5 at 14.50 hours.

8. Dr.Vinay Jacob, PW 3 stated in his evidence at Exh. 23 that on 10.11.1999 he was on duty as resident Doctor in Shardaben Hospital in burns and plastic surgery ward and during his duty hours one injured Pravinchandra Chhaganbhai was brought for treatment to the ward of the witness without police yadi from casualy ward; that the witness had examined the injured who had 86% burn injuries on his person on different parts of the body

including neck, face, abdomen, hands chest, legs etc; that the injured was given treatment including dressing and bandages were applied keeping the face open. The witness has proved the injury papers at Exh.26. It is further deposed that the injured succumbed to the burn injuries at 9.10 p.m. It is stated that during the treatment, the injured had stated as to how he had sustained the burns. In the first instance the injured had told the witness that the burn injuries were caused by accident thereafter, he had immediately said that he had tried to commit suicide and because of which injuries have been sustained. Both the statements made by the injured were noted in the certificate; that this injured had also stated that he was taking treatment and he had taken some medicines; that this statement is also noted in the case paper. While dressing and treatment was in progress, the injured again stated to the witness that he has been intentionally burnt and because of which the burn injuries have been caused. This statement was also noted in the case paper at 2.30 p.m; that all these burn injuries were antemortem and were sufficient to cause death. That it is not noted in the case paper as to by using which substance the burn injuries were caused but it has been stated that the injured has sustained injuries because of burns.

9. PW 2 Bhikhabhai Vaghela deposed at Exh.19 that on 10.11.1999 he was working as Executive Magistrate in City Mamlatdar's Office, Ahmedabad. On that day, while he was on duty, he received an intimation at 4 p.m. from Naroda police station for recording dying declaration; that it was stated in the intimation that one injured named Pravinchandra Chhaganbhai aged 22 years, residing at Thakkarbapanagar road is burnt and has been brought for treatment and has been admitted in Shardaben Hospital whose dying declaration has to be recorded. Thereafter, the witness came to Shardaben Hospital at about 4.25 p.m. after inquiring as to in which ward the injured is taking treatment he went to the burns ward where the injured Pravinchandra was kept. That after reaching the hospital, he had not obtained endorsement of the Doctor about the injured being conscious in the intimation; that the endorsement about the injured being conscious was mentioned in the intimation was read by him. After reaching the hospital, he had ascertained from the Doctor that the patient was conscious and thereafter he went to the injured and started recording dying declaration at about 4.30 p.m. That the statement has been recorded in his own handwriting and the information given by the patient has been noted down in the said statement. The said dying declaration has been produced and proved at

Exh.20.

10. We have perused Exh.20 the dying declaration of deceased Pravinchandra recorded by PW 2 wherein the deceased is stated to have told that on 10.11.1999 morning he had gone to Thakkarbapanagar bazaar for a stroll and in the lane of Thakkarbapanagar bus stand, Soniben, widow of Motibhai was staying and as he was passing through that place at that time Soniben called him and told him to come to her house as she has some work with him and when injured went to her house, her daughter Sugnaben aged 20 years was present; that in the meantime, Soniben poured solvent which was kept in a plastic bottle; that he tried to escape from sprinkling of the solvent but Soniben gave him a push and lighted match stick and threw it on his person which caused burn injuries to him. That he ran and sat in a water tank which was outside the house of one Sindhi in the adjacent lane. In the meantime, his father Chhaganbhai came and called for ambulance and brought him to Shardaben Hospital. It is stated that Soniben, widow of Motibhai had intentionally caused burn injuries to him. The declaration Exh.20 is purported to have been signed by Pravinchandra in English. It also bears signature of Bhikhabhai Vaghela, PW 2, Executive Magistrate, Ahmedabad. At the foot of the statement, an endorsement is made to the effect that in the opinion of the Doctor, it was verified that the injured was fully conscious and the dying declaration has been recorded in the absence of relations and the police persons at the time of recording of the dying declaration.

11. Exh.26 is the case paper of Shardaben Hospital proved in the evidence of PW 3, Doctor Vinay Jacob. We have perused the same. As pointed out earlier, PW 3 has stated in evidence that injured Pravinchandra firstly stated that he had sustained burn injuries accidentally. Then later on he said that he attempted to commit suicide and the burn injuries were caused and thereafter at about 2.30 p.m., the injured again said that he has been intentionally burnt. All these three statements made by the injured have been noted in the case paper Exh. 26. It is suggested from the evidence of PW 5 that the complaint Exh.29 was recorded at 14.50 hours and thereafter at about 4.30 p.m., PW 2 recorded dying declaration Exh.20.

12. As seen above, the complaint Exh.29 is recorded by PW 5 at 2.50 p.m. Prior to that the injured stated before PW 3 and noted in Exh.26 as to how the burn injuries came to be caused viz; accidental and attempted

suicide and after stating to the Doctor at about 2.30 p.m. that he was intentionally burnt, in the complaint Exh.29 it has been stated that accused No.1 poured solvent on him from a plastic bottle and lighted match stick and burnt him. Thereafter the dying declaration Exh.20 came to be recorded after 2.30 p.m. stating the same thing viz; implicating accused No.1, also stating that accused No.2 was also present at the time of the incident.

Thus, it will be seen from the above that in the evidence of the prosecution itself it is suggested that three different versions have been given by the deceased about the cause of burn injuries namely; accidental, suicidal and intentional burns alleged to have been caused by accused no.1 with the abetment of accused No.2. We are conscious that the dying declaration can be the sole basis for conviction. But in the instant case dying declaration Exh.20 cannot be regarded as reliable and trustworthy so as to inspire confidence to base conviction solely on it, and prior to Exh.20, the deceased gave three different causes for the burn injuries on his person and it cannot be said which one is reliable.

13. In the course of the investigation, panchnama pertaining to the place of incident has been drawn which has been proved at Exh.9. Perusal of the same does not suggest recovery of any solvent or any plastic bottle or container or any article having been burnt there. Nothing was found from nearby the house of the accused persons which can suggest the incident of burning having taken place in the house or around the house of the accused. The panchnama at the same time, suggests that there was a water tank and to the east and south of the water tank some pieces of burnt clothes and half burnt bush shirt were found. Even according to the complaint exh.29 and the statement Exh.20, the deceased, in burnt condition, sat in the nearby water tank. So it is quite natural that the half burnt sleeve of a bush shirt and the pieces of burnt clothes would be found from the nearby water tank. That by itself cannot connect the accused with the incident in any manner. Thus, the panchnama Exh.9 cannot be of any assistance to the prosecution for connecting the accused with the burn injuries that the deceased received on 10.11.1999.

14. The above being the state of evidence on record, it will be seen that it cannot be said with any certainty that it is the accused who must have caused the burn

injuries to the deceased since the deceased, as noted in the case paper Exh.26 and as deposed by PW 3, stated that the burn injuries were accidental, suicidal and intentional burns caused to him and dying declaration Exh.20 cannot be made sole basis of conviction as above stated. In view of the above, we are of the opinion that the learned Special Judge is justified in arriving at the finding that the burn injuries received by the deceased on 10.11.1999 cannot be connected with any of the accused persons and the finding of acquittal arrived at by the learned Special Judge does not call for any interference and the present appeal being devoid of substance, is liable to be dismissed at the admission stage.

The appeal is dismissed accordingly.

19.10.2002 [N G Nandi, J.]

[D P Buch, J.]
msp